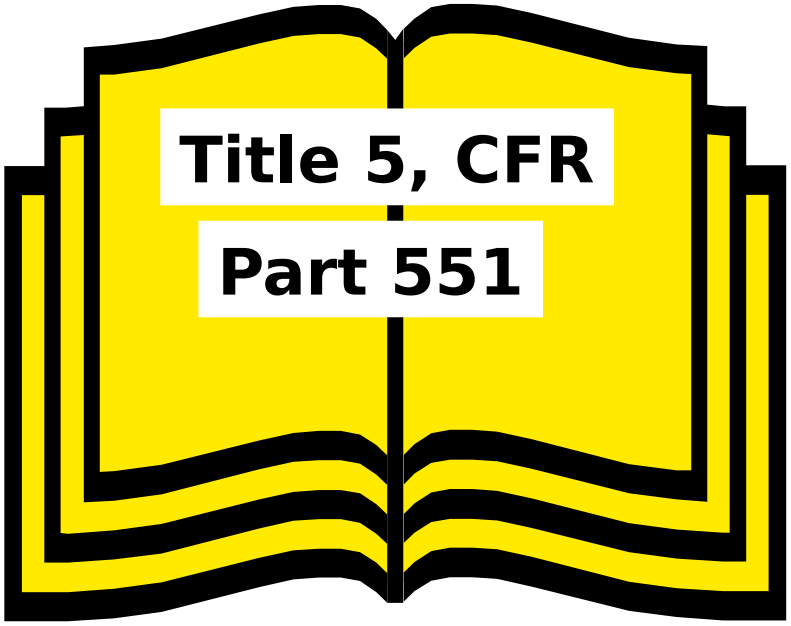
CIVILIAN PERSONNEL ADVISORY CENTER

Department of Army Fair Labor Standards Act Consistency Review

POINTS OF REFERENCE



FLSA OVERVIEW

- **Provides minimum standards for wages and overtime entitlements**
- **Specifies procedures for work-time compensation**
  - **Nonexempt - covered by the minimum wage and overtime provisions of the Act**
  - **Exempt - not covered by the minimum wage and overtime provisions of the Act**

FLSA DETERMINATION

Supervisor assigns duties and classifies position

ROLES

CPOC reviews job and makes "E" or "N" determination

- **Each employee is assumed to be nonexempt**
- **Burden of proof rests with agency**
- **Exemption criteria should be narrowly construed**
- **If there is reasonable doubt,**

GENERAL PRINCIPLES

General Schedule Employees

- GS-4 or below - nonexempt
- GS-5 or above - exempt only if the employee
  is an executive, administrative, or professional employee as defined in 5 CFR 551

Federal Wage System Employees

- Nonsupervisory employees are nonexempt
- Supervisory employees are exempt only if they
  meet the executive exemption defined in 5 CFR 551

PRACTICAL IMPLICATIONS

Nonexempt Employees

- **Entitled to overtime pay at 1.5 times their regular pay**
- **Must receive overtime pay unless**

Exempt Employees

pensatory time

- **Overtime pay is capped at 1.5 times GS-10 step 1 pay rate**
- **If basic pay is GS-10 step10 or below employee chooses overtime or comp**
- **If basic pay is above GS-10 step10, management chooses overtime or comp time**

Army-Wide Consistency Review

- DA conducted a paper review of all GS-7's through GS-12's
  - litigation/payout at Defense Logistics Agency
  - database clean-up for Modern DCPDS
- Changes identified
  - Exempt to Nonexempt
  - Nonexempt to Exempt
- FLSA not subject to collective bargaining but is subject to I&I
- Must give notice of the changes and bargain over I&I if requested.

Higher HQ Guidance

- **MSC commanders required to inform lower echelons of requirements and expectations**
- **Local commanders should proceed in concert at RSA**
- **Challenges to Army findings must be submitted in writing to CPOCMA**

Higher HQ Guidance - cont.

- New job description must be prepared for those cases where info was too “scanty” for CPOCMA to evaluate
- Biweekly reports to AMC
- Activities must report any grievances or settlements and/or backpay claims associated with the review

Implementation

- **Bargaining obligations must be met first**
- **After contractual obligations met**
  - **Commander sends list of requested changes to servicing CPOC for immediate action**
  - **CPOC processes by earliest possible date after receipt and produces SF-50 for downloading**
  - **CPOC to file SF-50 in OPF**
- **CPAC assures affected supervisors are cognizant of overtime requirements**

Employee Claims

- **FLSA Claims**
  - **exemption determination**
  - **overtime pay**
- **Bargaining unit employees use:**
  - **negotiated grievance procedure**
  - **if not satisfied, arbitration**
- **Nonbargaining unit employees use:**
  - **administrative grievance procedure**
  - **if not satisfied, OPM review**
- **Nonbargaining unit employees can file directly with OPM**

Summary

- **Challenges must be submitted to DA**
- **Supervisors will notify employees of changes**
- **CPAC will provide further training on FLSA upon request**